IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) Nos. 128 & 146 of 2000

Date of decision : 12.10.2006

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1. Santosh Kumari …Appellant.

Versus

Yog Raj & others …Respondents.

2. New India Assurance Co. ….. Appellant

Versus

Santosh Kumari and others ……. Respondents

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The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: (See overleaf)

For respondents : (See overleaf)

Surjit Singh, Judge (Oral)

These two appeals are directed against the same award of the Motor Accident Claims Tribunal and, therefore, they are being disposed of by a common judgment. One appeal (FAO No. 146 of 2000) has been filed by the Insurance Company and the other (FAO No. 128 of 2000) by the claimant (now represented by his legal representative).

Whether reporters of Local Papers may be allowed to see the Judgment?

2. Relevant facts may be noticed. Claimant Pritam Chand was on board a bus, owned by respondent Swarup Singh, on 7.2.1996, when it met with an accident. The bus was being driven by Yog Raj, respondent. It was insured with New India Assurance Company (appellant in FAO No. 146 of 2000). As a result of the accident, claimant Pritam Chand sustained multiple injuries, including fracture of dorsal vertebra D12 of back-bone, resulting in traumatic paraplegia with hundred percent permanent disability. So he filed a petition claiming compensation to the tune of rupees ten lacs. The owner, the driver and the Insurer were impleaded as respondents. The insurer took the plea that respondent Yog Raj did not possess a valid licence to drive the vehicle. The Motor Vehicle Accident Claims Tribunal, after holding inquiry, concluded that the accident had taken place due to the rash or negligent driving of the bus by respondent Yog Raj and that as a result of the accident, the claimant sustained fracture of dorsal vertebra resulting in hundred percent permanent disability and awarded a sum of Rs.4,50,000/- as compensation, with interest at the rate of 12% per annum from the date of the petition to the date of deposit of the compensation money and ordered the insurer to satisfy the award.

3. The insurer has taken the plea that Yog Raj did not possess a valid driving licence to drive the bus and that he possessed the licence to drive only a heavy goods vehicle. During the course of hearing, learned counsel submitted that the claimant having died

during the pendency of the appeal, the compensation awarded for future pain and suffering to the tune of Rs.1.50 lacs was required to be deducted from the total amount of compensation.

4. The claimant filed the appeal for enhancement of the compensation. During the pendency of the appeal he has expired and his legal representative, namely his widow Santosh Kumari has been brought on record.

5. I have heard the learned counsel for the parties and gone through the record.

6. Learned counsel for the Insurance Company (appellant in FAO No. 146 of 2000) by referring to the testimony of RW-2 Ramesh Chand, an employee of Licencing Authority Hamirpur, and RW-4 Santosh Kumar, Manager of the appellant Insurance Company, stationed at Hamirpur, and the copy of the driving licence Ext RW-1/D submitted with the licence was valid only for heavy goods vehicle and not for a heavy passenger motor vehicle and, therefore, the holder of the licence, namely Yog Raj, respondent was not authorized to drive the vehicle, in question, which was a heavy passenger motor vehicle.

7. A look at the licence, copy Ext. RW-1/D, shows that this licence was issued by the Licencing Authority Alwar, Rajasthan in the year 1983 for heavy goods vehicle and 'HMV'. Letters 'HMV' which denote 'Heavy Motor Vehicle', were written in hand. Vehicles of other descriptions printed on this licence were scored out. The licence also

bears the following addition in printed words, except the dates denoting the period of validity which are written in hand:-

”A motor vehicle of the following description.

The licence to drive a motor vehicle other than the transport vehicle is valid	The licence to drive transport vehicle is valid from 07/01/83 to 01/01/1998
Name and designation of the Authority who conducted the driving test	Sd/- Licencing Authority Alwar (Raj.)”

8. The above reproduced addition is apparently in the form of two alternatives, one of which was required to be scored out. However, a look at the licence shows that neither of the two endorsements was scored out. Now when the licence was for heavy goods vehicle and ‘HMV’, denoting for heavy motor vehicle written in hand, the presumption should be that the addition was intended to authorize the holder of the licence to drive transport vehicle, because as per definition of ‘transport vehicle’ given in sub-section (47) of Section 2 of the Motor Vehicles Act, it means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle and probably by ‘HMV’ the Licencing Authority meant ‘heavy passenger motor vehicle’, because for goods carriage he had tick-marked the printed category ‘heavy goods vehicle’. This presumption is strengthened by the fact that though the Insurance Company had obtained some report from the Licencing Authority, Alwar also as testified by RW-4 Santosh Kumar, Branch Manager of the Insurance Company, the said report has been with-held and, therefore, an

adverse inference is required to be drawn that the said report is not favourable to the Insurance Company. The endorsement that is made on the licence by the Licencing Authority, Hamirpur, is for 'HMV' and hill road and also authorizes the holder to drive a transport vehicle.

9. As already noticed, a transport vehicle includes public service vehicle, which according to sub-section (35) of Section 2 of the Motor Vehicles Act means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward. The vehicle, in question, being a bus, was thus a public service vehicle, as it was meant for carriage of passengers for hire or reward.

10. For the foregoing reasons, the plea that the driver did not possess a valid driving licence is rejected.

11. Contention raised on behalf of the Insurance Company during the hearing of the appeal that the compensation amount be reduced by the amount awarded on account of future pain and suffering, because of the death of the claimant, merits rejection both on merits and technical ground. Claimant was 43 years of age. He was awarded a sum of Rs.1.50 lacs on account of future pain and sufferings by the Motor Accident Claims Tribunal on 15.12.1999. He lived up to 9.10.2001, that is to say for about two years after the award of compensation for future pain and sufferings. Admittedly, the cause of death was the injury sustained in the accident and the resultant hundred percent permanent disability from the said injury.

Since the claimant lived for two years after the award of the compensation, the amount awarded on account of future pain and sufferings cannot be taken back. The amount awarded on this account is required to be treated for pain and sufferings from the date of the award of the compensation to the date of his death.

12. Coming to the technical aspect, the Insurance Company cannot raise the plea that the quantum of compensation is excessive. It can raise only such pleas as are available to it as defences, under Section 149 (2) of the Motor Vehicles Act.

13. As an upshot of the above discussion, appeal filed by the Insurance Company, i.e. FAO (MVA) No. 146 of 2000, is dismissed.

14. The Tribunal has awarded a sum of Rs. 4.50 lacs on account of compensation, with interest at the rate of 12% per annum from the date of accident. The injured was 43 years of age at the time of occurrence of the accident as his date of birth, per school leaving certificate Ext. P-50, was 26.10.1953. He stated, while appearing as his own witness, that he was a shopkeeper by occupation and used to earn Rs.5000/- to Rs.6000/- per month and besides that he used to cultivate his land the area of which was 19 Kanals. The Tribunal, after appreciating the evidence, has concluded that the income of the injured was to the tune of Rs.2000/- per month. Since the injury resulted in hundred percent permanent disability, the Tribunal adopted the entire proved income of the injured as datum figure for working out the quantum of compensation on account of

loss of earnings. Multiplier of ten years' purchase was adopted and a sum of Rs.2,40,000/- awarded on account of loss of earnings. A sum of Rs.10,000/- was awarded on account of loss of expectation of life. Rs.25,000/- were awarded on account of medical expenses. Another sum of Rs.25,000/- was awarded on account of expenses of attendant and loss of earnings during the period when the claimant had been undergoing treatment. Rs.1,50,000/- were awarded under the head 'non-pecuniary loss'.

15. Though looking to the age of the claimant a multiplier of twelve was required to be adopted for working out the quantum of compensation on account of loss of future earnings, yet taking into account the fact that a sum of Rs.1,50,000/- has been awarded on account of non-pecuniary loss and another sum of Rs.10,000/- has been awarded on account of loss of expectation of life and the claimant has died, it is felt that the sum total of the compensation, awarded under various heads, represents just and reasonable compensation. Therefore, the appeal for enhancement of compensation filed by the claimant, i.e. FAO (MVA) No. 128 of 2000, is also dismissed.

October 12, 2006 (BC) **(Surjit Singh)**
Judge

FAO No. 128 of 2000

Santosh Kumari …… Appellant

Versus

Yog Raj and others …….. Respondents.

For the appellant : Mr. R.K. Sharma, Advocate.

For the respondents : Mr. Ramakant Sharma, Advocate, for Respondents No. 2 and 4.

Mr. K.D. Sood, Advocate, for Respondent No. 3.

FAO No. 146 of 2000

New India Assurance Co. …….. Appellant

Versus

Santosh Kumari and others ……. Respondents.

For the appellant : Mr. K.D. Sood, Advocate.

For the respondents : Mr. R.K. Sharma, Advocate, for Respondents No. 1(i) to 1(iii)

Mr. Ramakant Sharma, Advocate, for Respondents No. 3 to 5.

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